(1)

No. 932090

JUN 14 1994

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JULIA McCAIN LAMPKIN ASAM, Ph.D.,J.D.

Petitioner

v.

BERNARD HARWOOD

Respondent

PETITION FOR WRIT FOR CERTIORARI FROM

U.S. COURT OF APPEALS, 11th CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JULIA McCAIN LAMPKIN ASAM, Ph.D.,J.D.

ATTORNEY AT LAW

P.O. BOX 591

NORTHPORT, ALABAMA 35476

(205) 333-1999

29 pp

STATEMENT OF ISSUES

I. Whether "actual malice" was shown as defined in New York Times v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962), 373 U.S. 254 at 255, (1964) when Defendant Harwood did KNOWINGLY make the false statement, [Vol. I, #1, Exhibit, dated October 19, 1992],

"On November 3rd, vote for Judge Bernard Harwood, the ONLY QUALIFIED CANDIDATE FOR Circuit Judge, Place #4" [Emphasis added.]

when Judge Harwood, acting under color of state law, since he was a judge running for office, and when Judge Harwood knew Julia Asam was a lawyer who practiced in his court, and Judge **Harwood knew that Julia Asam had a Ph.D., and J.D.**, and was qualified as the Democratic Nominee for the same judgship, Circuit Judge, Place #4.

II. The issue of whether both candidates for the same judgship [Circuit Judge, Place #4], were political figures is **moot**; however, the fact in the instant case coming under the definition

of "actual malice", which is defined "knowledge that statements are false or in reckless disregard of the truth" [See New York Times v. Sullivan, supra].

III. Whether Judge Bernard Harwood as a candidate, **knowingly** making false statements in his ads,

"On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for Circuit Judge, Place #4"

caused stigmatization and business libel to Dr. Asam as a lawyer and candidate for the same judgship and by Judge Harwood's false advertisements stating he was the only qualified candidate, Dr. Asam's constitutional liberty rights under the 5th and 14th amendments to the U.S. Constitution were violated and triggered in the violation of her 42 U.S.C. § 1983 claims of violating her civil rights?

IV. Whether Judge Harwood always used the word

JUDGE WHEN HE KNOWINGLY MADE THE FALSE AD statement,

"On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for Circuit Judge, Place #4."

and therefore, the 42 U.S.C. § 1983 claims are valid?

v. Whether the Honorable Court was using the right standard of review because of Exhibits in the record, attached to the Complaint and Deposition, showing that Judge Harwood, knowingly made false statements in his ads as quoated above that he was "the only qualified candidate for Circuit Judge, Place #4",

i.e. the standard of review should have been summary judgment instead of "set of facts" for diamiss.

VI. Whether the Honorable Judge made reversible error after he was noticed of actual tampering with the federal record by someone unknown

who changed the "filed" to "Rec'd" and marked through the word Motion without putting any initial for the alteration and tampering with the federal record, and the said "Motion Objecting to the Motion to Dismiss" disappeared from the record and did not get on the docket sheet and later reappeared in the record as an alteration by someone unknown, when the "Motion Objecting... had been timely filed.

VII. Whether there was res adjudicata when the state case below had never left the state court while the instant case was in the U.S. District Court, Northern District of Alabama?

TABLE OF CONTENTS

	Page
Table of Contents	v
Questions Presented for Review	i
Parties to the Proceeding	viii
Oral Argument Requested	viii
Citations of Authority	vi
Opinions below	1
Jurisdiction	2
Statement of Case	4
Statement of the Facts	7
Reasons for Writ of Certiorari	10
Conclusion	19
Appendix	a-1

CITATIONS OF AUTHORITY

Page

American Benefit Life Insurance Co. v. McIntyre, 375 So. 2d 239 (Ala. 1979) .. 18

Bantam Books, Inc. v. Sullivan, R.I., 1963 83 S Ct 631, 372 U.S. 58 9 L. Ed 2d 584 14

Booth v. United Services Auto Association 469 So. 2d 1281 (Ala. 1985) 13

Fulton v. Advertiser Co., 388 So. 2d 533 (Ala. 1980), cert. denied 449 U.S. 1125 & 1131, 101 S Ct 942, 954, 67 L. Ed. 2d 111 & 119. 18

Harte-Hanks Communications v. Connaughton, 491 U.s. 657, 109 S Ct 2678, 105 L Ed. 2d 562 (1989) 18

Hightower & Co. v. U.S. Fidelity & Guar., 527 So. 2d 698, at 699 (Ala. 1988). 14

Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983) 14

Lugar v. Edmondson Oil Co., 457 U.S. 922, 937, (1982) 17

Monroe v. Pape,
365 U.S. 167, 172 (1961) 17

New York Times v. Sullivan, 273 Ala. 356,
144 So. 2d 25 (1962, 376 U.S. 254, at
255, (1964) i,ii,,10,18

Paul v. Davis, 424 U.S. 645,
96 S Ct 1154, 47 L Ed 366 (1976) ... 16

Pruitt v.Elliott,
460 So. 2d 1275, (Ala. 1984) 13

Samuels v. District of Columbia,
770 F. 2d 184, C.A.D.C. 1985 16

Standard Oil Co. v. Graves, Wash. 1919,
49 S Ct 320, 269 U.S. 389, 63 L Ed 662. 12

Velger v. Cawley
525 F. 2d 334 (2nd Cir. 1975) 14

Book
Section 1983 Litigation: Claims, Defenses,
Fees, M.A. Schwartz, John E. Kirklin, John
Wiley & Sons, 1986, p. 101 17

PARTIES TO THE PROCEEDING

The Plaintiffs/Appellants/Petitioners is:

Julia McCain Lampkin Asam, Ph.D.,J.D.

The Defendants/Appellees/Repondents is:

Bernard Harwood

ORAL ARGUMENT REQUESTED

The Petitioner respectively requests that oral argument be allowed because of the complexity of the facts and the law in the instant case, and so that the Honorable Justices can ask questions.

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JULIA McCAIN LAMPKIN ASAM, Ph.D.,J.D.

Petitioner

v.

BERNARD HARWOOD

Respondent

PETITION FOR WRIT FOR CERTIORARI FROM

U.S. COURT OF APPEALS, 11TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below into this Writ of Certiorari.

JURISDICTION

Reversal and review is sought from the final decision from the Supreme Court of Alabama, the highest court in Alabama who originally denied the appeal. Jurisdiction is invoked under 28 U.S.C. § 1257 as Writ.

Constitutional Provisions involved

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of

... property without DUE PROCESS OF LAW: nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

United States Constitution, Amendment I.,

"Congress shall make no law respecting an establisment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Federal statute

42 U.S.C. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, usuage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United

States, or other person within the jurisdiction privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

This is a political case between the Democratic nominee Julia Lampkin Asam, Ph.D.,J.D., and the Republican nominee, Judge Bernard Harwood, for the same judgship, Circuit Judge, Place #4, in the Nov. 3, 1992 election in which Judge Harwood made the following false statement even after notice to cease making the false statement,

> "On November 3rd, vote for Judge Bernard Harwood, only qualified candidate for Circuit Judge, Place #4." [Emphasis added.]

This statement was made in numerous ads in the Tuscaloosa News, TV WCFT Channel 33, and radio.

Judge Harwood after notice of this false statement "the only qualified candidate for Circuit Judge, Place #4" [Emphasis added.] did knowingly

deliberately, maliciously, and with reckless disregard for the truth did publish in the press ads that were false and deceitful, and knowingly with intention to misrepresent the true facts by Bernard Harwood claiming he was the "only" qualified candidate when Dr. Asam was the Democratic nominee and Bernard Harwood was the Republican nominee. Bernard Harwood was knowingly misleading the voters with his false campaign ads in the media and thus "stealing votes" as well as permanently stigmatizing Dr. Asam in her profession as a lawyer. See Plaintiff #5 of Harwood Deposition.

Since the instant case is a political case between two public figures the instant case turns on the reckless continuance of Judge Harwood libeling Dr. Asam, and Judge Harwood making false statements that he was "the only qualified candidate for Circuit Judge, Place #4, [Emphasis added.], when in reality he was not the only qualified candidate for the same judgship, Circuit Judge, Place #4, since Dr. Asam was

also candidate as Democratic nominee for this same judgship, Circuit Judge, Place #4 that Judge Harwood was a candidate as the Republican nominee.

The original case was timley filed on January 5, 1993, showing that the constitutional rights of Dr. Asam's liberty rights were violated with Bernard Harwood's false statement "the only qualified candidate for Circuit Judge, Place #4 after notice, stigmatized her, embarassed her, and caused her financial loss, by damaging her reputation as a lawyer and candidate for Circuit Judge, Place #4. A violation of the 5th and 14th Amendments triggers the 42 U.S.C § 1983 claim of civil rights of Dr. Asam being violated by Judge Harwood's false statements in all three media [Tuscaloosa News, TV, and radio] when Bernard Harwood made the statement he was "the only qualified candidate for Circuit Judge, Place #4".

STATEMENT OF THE FACTS

. The Petitioner incorporates all facts stated above in the Statement of the Case and states that Bernard Harwood was knowingly and deliberately after notice continuing in all media [Tuscaloosa News, TV, and radio] to publish numerous false and misleading campaign ads which libeled Dr. Asam when Bernard Harwood made the following statement,

"On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for Circuit Judge, Place #4." [Emphasis added.]

Video of ad is in the record in the Supreme court of Alabama.

This is a political lawsuit between the Democratic nominee, Julia Lampkin Asam, and Republican nominee, Bernard Harwood, who were candidates in the November 3, 1992, election campaign for the same judgship, Circuit Judge, Place #4.

Judge Harwood has completely ignored the true facts of the qualifications of Dr. Asam and to make a statement that Judge Harwood is "The only qualified candidate for Circuit Judge, Place #4" [Emphasis added.], is a lie and is misleading the public concerning the qualifications of his opponent, Dr. Asam. Mr. Harwood could have said he was the "most qualified" "more qualified" or any other statement except the word "only" which is a false statement since Dr. Asam had a Ph.D., and J.D., as well as other degrees and experience as a practicing lawyer, and her qualifying fee had been accepted; therefore, Judge Harwood was making clearly a false statement by using the word "only" in the above quote. Judge Harwood was "taking votes" from Dr. Asam by libeling her after he was noticed to stop libeling her, but Judge Harwood continued to recklessly libel her in three press medias [newspaper, radio, and TV] by his false and deceitful advertisement in his ads.

There is no doubt about it that Judge Harwood not only libeled Julia Asam individually but libeled her in her business as a lawyer and went further and stigmatized her to the point that Judge Harwood violated the liberty rights of Dr. Asam under the 5th and 14th amendments to the U.S. Constitution, and stigmatizing with <u>false</u> information comes under the 42 U.S.C. § 1983 claims which were added to this instant case by Amended Complaint since Judge Harwood was clearly "acting under color of state law" since he was also a judge running as a judge candidate.

REASONS FOR WRIT OF CERTIORARI

All the Questions Presented are discussed together in this "Reasons for Writ of Certiorari".

The first, fifth, and fourteenth amendments to the U.S. Constitutional rights of Dr. Asam not to be libeled with false statements by a seated judge "acting under color of state law" since Judge Harwood used the word "judge" in all his false and deceitful ads,misrepresenting the qualifications of Dr. Asam. All the ads containing the false statements in all media [newspaper, TV and Radio] stated as follows:

> "On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for Circuit Judge, Place #4." [Emphasis added.]

This is a political case where Judge Harwood was publishing false ads about Dr. Asam when both Asam and Harwood were public figures running for the same judgship in the 1992 election.

Specifically the Supreme Court of Alabama has not ruled according to the New York Times v.

Sullivan, 273 Ala. 356, 144 So. 2d 25 (1962), 376 U.S. 254, at 255, (1964), which states,

> "Factual error, content defamatory of official reputation, or both are insufficient to warrant an award of damages unless "actual malice" -- knowledge that statements are false or in reckless disregard of the truth -- is alleged and proved. [Emphasis added.]

Judge Harwood clearly had knowledge that he was making false statements "under the color of state law"and violating the the civil rights of Dr. Asam when Judge Harwood was claiming he was the "only" qualified candidate when in reality Judge Harwood was the Republican nominee and Dr. Asam was the Democratic nominee. Not only did the false statements cause Dr. Asam to lose votes because of Judge Harwood's false and unethical statement of claiming that he was the "only" qualified candidate for the same judgship as Dr. Asam, [Circuit Judge, Place #4].

Dr. Asam's liberty rights due to stigmatization of Dr. Asam as a person and as a candidate in same judgship campaign, under the 5th and 14th Amendments to the U.S. Constitution have been violated.

See Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 269 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judge by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void.] (Emphasis added.)

See Horwitt v. Horwitt, D.C., Conn. 1950, 90 F. Supp. 529,

"United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes."

Standard of review should have been summary judgment instead of "sets of facts" for dismiss because of affidavits outside the pleadings.

The elements of summary judgment are found in the following Alabama two cases:

See Booth v. United Services Auto Association, 469 So. 2d 1281 (Ala. 1985), which states,

"To grant summary judgment, trial court must find that there is no genuine issue of material fact and that movant is entitled to judgment as matter of law. Rules Civ. Proc., Rule 56."

Also see Pruitt v. Elliott, 460 So. 2d 1275, (Ala. 1984), which states,

"Summary judgment is proper when there is no genuine issue of material fact and moving part is entitled to judgment as matter of law; all reasonable doubts concerning existence of genuine issue of fact must be resolved against moving party. Rules Civ. Proc. Rule 56 (c)."

See Hightower & Co. v. U.S. Fidelity & Guar., 527 So. 2d 698, at 699 (Ala. 1988), which states,

"Granting Summary Judgment is nondiscretionary function of trial court, and no presumption of correctness attaches to such decision upon appellate review. Rules Civ. Proc., Rule 56 (c)."

See Velger v. Cawley, 525 F. 2d 334 (2nd Cir. 1975) on due process.

See Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983), which states,

"Due process clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13.

Also see Bantam Books, Inc. v. Sullivan, R.I., 1963, 83 S Ct 631, 372 U.S. 58, 9 L. Ed 2d 584, which states,

"The Supreme Court's appellate jurisdiction

was properly invoked, where the state court judgment sought to be reviewed upheld a state statute against contention that on its face and as applied, the statute violated the federal Constitution."

See Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 269 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judge by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void.] (Emphasis added.)

Judge Harwood was a seated judge acting "under color of state law" because Judge Harwood always used the word JUDGE when he knowingly made the false ad statement,

"On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for Circuit, Judge, Place #4." [Emphasis added.]

and therefore the 42 U.S.C. § 1983 claims are valid.

See 42 U.S.C. § 1983, which states,

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suite in equity, or other proper proceeding for redress."

See Paul v. Davis, 424 U.S. 645, 96 S Ct 1154, 47 L Ed 366 (1976).

The civil rights act of 1871 (42 U.S.C.A. § 1983) does not create substantive rights, but provides express federal remedy against state officials for deprivation of rights established elsewhere in federal law. See Samuels v. District of Columbia, 770 F. 2d 184, C.A.D.C. 1985.

See book Section 1983 Litigation: Claims, Defenses. Fees, M.A. Schwartz, John E. Kirklin, John Wiley & Sons, 1986, on p. 101, states,

"§5.9 Tests to Determine State Action -- In General... The Court did state that, to find state action, two general requirements must be fulfilled. First, "the deprivation must be caused by the exercise of some right or privilege created by the state or by a person for whom the state is responsible. [See Lugar v. Edmondson Oil Co., 457 U.S. 922, 937, (1982).] Second, the defendant "must fairly be said to be a state actor. [See Lugar case].

See Monroe v. Pape, 365 U.S. 167, 172 (1961) "The Two principles "collapse into each other when the claim of a constitutional deprivation is directed against a party whose official character is such as to lend the weight of the state to his decisions."

The fact that both Dr. Asam and Judge Harwood were political figures as candidates for judge, which triggers the instant case coming under

the definition of "actual malice", which is defined "knowledge that statements are false or in reckless disregard of the truth" [See New York Times v. Sullivan, supra].

See Harte-Hanks Communications v. Connaughton, 491 U.S. 657, 109 S. Ct 2678, 105 L Ed 2d 562 (1989). Whether the plaintiff is a public figure, also see Fulton v. Advertiser Company, 388 So. 2d 533 (Ala. 1980), cert. denied 449 U.S. 1125 &1131, 101 S. Ct 942, 954, 67 L. Ed. 2d 111 & 119.

In the instant case "actual malice" is clearly shown as defined in the New York Times v. Sullivan, supra case as stated above. Also see American Benefit Life Insurance Co. v. McIntyre, 375 So. 2d 239 (Ala. 1979). The Respondent has failed to show no "actual malice" was shown, since Judge Harwood received the notice letter October 20, 1992 [Plaintiff's #5 in the deposition], and Judge Harwood, knowingly and deliberately was publishing false ads by making the statement that he was the only qualified candidate for the same judgship.

CONCLUSION

The Writ of Certiorari should be granted for the above reasons, and the Petitioner should be allowed to write the Merits brief so that the instant case can be reversed and remanded to the trial court for all triable issues before a jury.

Respectively submitted,

Julia Asam

Julia Asam,
Attorney At Law
P.O. Box 591
Northport, Alabama 35476
205 - 333-1999

APPENDIX I

IN THE U.S. DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA

Julia McCain Lampkin Asam,

Plaintiff

v.

Judge Bernard Harwood

Defendant

CV 93 C 0027-W

Date 1/26/93

"ORDER granting motion to dismiss [4-1] w/ prejudice.

By Judge U.W. Clemon

APPENDIX II

U.S. COURT OF APPEALS, 11TH CIRCUIT

Julia McCain Lampkin Asam,

Plaintiff

v.

Judge Bernard Harwood

Defendant

CV 93-6157

Date 3/16/94

Affirmed.

By Justices Anderson, Birch and Fay

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this Writ... was sent to Mr. Richard Gill, Copeland, Franco et al. P.O. Box 347, Montgomery, Alabama 36101 this 14 day of June 1994.

Julia Asom